IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14398 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESH RANCHHODBHAI PATEL & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR BG PATEL for Petitioner No(s).: 1,2.

MR PR ABICHANDANI, AGP for RespondentS

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CORAM : HON'BLE MR JUSTICE AKIL KURESHI

Date : 18/07/2005

ORAL JUDGMENT

Rule. Learned AGP Shri Abichandani waives service of notice of rule on behalf of the respondents.

2. In the present petition, the petitioners have

challenged the order dated 17th May, 2005 passed by the Deputy Collector, Anand. By the said order, the Deputy Collector was pleased to hold that certain piece of land bearing survey No.541/1 admeasuring 34 Are and 39 sq. meters and land bearing survey No.541/3 admeasuring 17 Area and 20 sq. meters belonging to the petitioners was not cultivated continuously for a period of more than two years and the Deputy Collector, therefore, in exercise of powers under section 65 of the Bombay Tenancy and Agricultural Lands Act was pleased to order that the management of the land should be taken over by the Government for a period of 10 years. In response to the notice issued by the Deputy Collector, the petitioners contended that the areas surrounding the land in question have now been fully developed and there are residential houses and that the town planning scheme is also finally implemented. He, therefore, contended that for want of any irrigation facilities, the petitioners could not cultivate the land. The authority, however, found that except the bare statement made on behalf of the petitioners, there was nothing on record to establish these averments. The defence of the petitioners was therefore ignored and since it was found that the petitioners had not cultivated the land for a period of more than two years, the Deputy Collector was pleased to

exercise power under section 65 of the Bombay Tenancy and Agricultural Lands Act.

3. Learned advocate for the petitioners submitted that it is true that sufficient material in support of the contentions raised by the petitioners were not produced before the authority, however, at the relevant time, the petitioners did not have necessary maps and other documents in their possession which the petitioners have now received. He submitted that if the petitioners are given one more opportunity to represent their case before the authority, they will make out a case for dropping the proceedings by producing necessary documents in support of their contentions.

4. In the facts of the case, I find that it would be appropriate in the interest of justice to permit the petitioners to avail of an opportunity to produce the necessary documents before the authorities in support of their contentions. As noted earlier, the authority turned down most of the averments of the petitioners on the ground that no supporting documents were produced by him. In conclusion, therefore, by quashing the order dated 17.5.2005 passed by the Deputy Collector, Anand, the proceedings are remanded back to the said authority for

fresh consideration and decision after permitting the petitioners an opportunity to produce on record additional documents which they may do within a period of four weeks from today. I have not expressed any opinion on the validity of the contentions raised by the petitioners and the authority will decide the question in accordance with law on the basis of the material that maybe placed on record.

5. With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)